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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

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9 DEMETRIOUS STEWART,

Case No. 3:16-cv-00046-MMD-WGC

10 Plaintiff,

11 v.

ORDER ACCEPTING AND ADOPTING
REPORT AND RECOMMENDATION OF
MAGISTRATE JUDGE
WILLIAM G. COBB

12 E.K. DANIEL, *et al*,

13 Defendants.

14 **I. SUMMARY**

15 Before the Court is the Report and Recommendation of United States Magistrate
16 Judge William G. Cobb (ECF No. 21) ("R&R") recommending the Court deny Plaintiff
17 Demetrious Stewart's Motion for Preliminary Injunction ("Motion") (ECF No. 17). Plaintiff
18 filed an objection ("Objection") (ECF No. 22) and Defendants filed a response
19 ("Response") (ECF No. 24). Plaintiff then filed a reply to the Response ("Reply") (ECF
20 No. 25). LR IB 3-2(a) provides that replies are permitted to be filed only with leave of
21 court. Plaintiff did not seek leave of court to file his Reply. The Reply will be stricken.

22 **II. RELEVANT BACKGROUND**

23 Following screening, the Court permitted Plaintiff to proceed on his single claim
24 for Eighth Amendment deliberate indifference to a serious medical need based on
25 allegations that he has been denied special shoes that are medically prescribed. (ECF
26 No. 5.) Plaintiff alleges in the Complaint that he requires special shoes that meet his
27 medical needs and that he has previously been permitted to order and wear these shoes
28 that were either special ordered for him or sent in from a shoe company paid for by his

1 family member. (ECF. No. 6 at 3-4.) Plaintiff alleges that on May 2, 2015, he received in
2 the mail a pair of shoes ordered from an outside vendor, but he was told he could not
3 have them without medical authorization and the medical authorization he provided was
4 rejected as having been expired. (*Id.* at 4-5.) When Plaintiff provided the updated
5 medical authorization, he was still denied the shoes and was directed to consult with
6 Defendant Williams. (*Id.*) Plaintiff alleges that without these shoes, he suffers pain as he
7 attempts to engage in day to day activities. (*Id.*)

8 Plaintiff subsequently moved for preliminary injunctive relief, contending that
9 Defendants “still refused to give him the shoes that was mailed to him from a shoe
10 company.”¹ (ECF No. 17 at 5.) Plaintiff asks the Court to “order the defendants to permit
11 plaintiff to have his shoes within one day of receipt of the court’s order.” (*Id.* at 8.)

12 **III. LEGAL STANDARDS**

13 Injunctive relief, whether temporary or permanent, is an “extraordinary remedy,
14 never awarded as of right.” *Winter v. Natural Res. Defense Council*, 555 U.S. 7, 24
15 (2008). “A plaintiff seeking a preliminary injunction must establish that he is likely to
16 succeed on the merits, that he is likely to suffer irreparable harm in the absence of
17 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in
18 the public interest.” *Am. Trucking Ass’ns, Inc. v. City of Los Angeles*, 559 F.3d 1046,
19 1052 (9th Cir. 2009) (quoting *Winter*, 555 U.S. at 20). Furthermore, under the Prison
20 Litigation Reform Act (“PLRA”), preliminary injunctive relief must be “narrowly drawn,”
21 must “extend no further than necessary to correct the harm,” and must be “the least
22 intrusive means necessary to correct the harm.” 18 U.S.C. § 3626(a)(2).

23 This Court “may accept, reject, or modify, in whole or in part, the findings or
24 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party
25 timely objects to a magistrate judge’s report and recommendation, then the court is
26 required to “make a *de novo* determination of those portions of the [report and

27 ¹The Recommendation recites the parties’ respective factual allegations relating
28 to the Motion (ECF No. 21 at 4-7), which the Court adopts.

1 recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1). In light of Plaintiff’s
2 Objection, the Court has engaged in a *de novo* review to determine whether to adopt
3 Magistrate Judge Cobb’s recommendation to deny Plaintiff’s Motion.

4 **IV. DISCUSSION**

5 The Magistrate Judge found that Plaintiff has been offered the procedures for
6 obtaining shoes that satisfy Plaintiff’s medical needs as in the past, Plaintiff has not
7 demonstrated that the shoes provided in the past did not meet his medical needs, and
8 Plaintiff insists that he be provided with the shoes ordered for him by his family from a
9 vendor that NDOC has not authorized. (ECF No. 21 at 7-9.) Based on these findings, the
10 Magistrate Judge recommends denying Plaintiff’s Motion because Plaintiff fails to
11 demonstrate likelihood of success on the merits or likelihood that he will suffer
12 irreparable harm. The Court agrees and adopts the Magistrate Judge’s findings and
13 recommendation.

14 In his Objection, Plaintiff argues that he did dispute that Chambers offered to go
15 through the same procedures as in the past to order him shoes that met his medical
16 needs because he alleges in his Complaint that Chambers told him he was no longer
17 authorized to order shoes for health reasons.² (ECF No. 22 at 1.) Plaintiff asserts that he
18 would have no reason to refuse Chambers’ offer. (*Id.* at 2.) However, Plaintiff’s Motion
19 asks the Court to direct that he be given the shoes his family ordered for him from a
20 vendor deemed unauthorized. (ECF No. 17.) Plaintiff’s Motion does not ask that the
21 Court direct Chambers to follow past procedures to order shoes that accommodate his
22 medical condition as Defendants have done in the past. The request identified in
23 Plaintiff’s Objection—that Defendants “provide [Plaintiff] with shoes that meet [Plaintiff’s]
24 medical needs as determined by the doctor in the updated medical order dated

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27 ²In the Complaint, Plaintiff alleges that his level one grievance was denied and he
28 was told that Chambers can order shoes for him, but Chambers told Plaintiff that “he was
told not to special order shoes for health reasons anymore.” (ECF No. 6 at 5.)

December 2, 2015” (ECF No. 22 at 4)—is not the relief that Plaintiff seeks in his Motion.³ Thus, as presented, the Court will deny Plaintiff’s Motion.

Plaintiff’s Objection also argues that he did not have proper notice that packages sent to him must come from authorized vendors because the list of vendors are not found within AR 711.1. (ECF No. 22 at 2.) However, the Magistrate Judge correctly found that AR 711.1 provide sufficient notice that outside packages must come from authorized vendor. (ECF No. 21 at 7.) The absence of a specific list of vendors does not render the notice that packages must be sent from approved vendors ineffective.


V. CONCLUSION

It is therefore ordered, adjudged and decreed that the Report and Recommendation of Magistrate Judge William G. Cobb (ECF No. 21) is accepted and adopted in its entirety.

It is ordered that Plaintiff’s Motion for Preliminary Injunction (ECF No. 17) is denied.

It is further ordered that the Clerk strike Plaintiff’s unauthorized Reply (ECF No. 25.)

DATED THIS 2nd day of May 2017.



MIRANDA M. DU
UNITED STATES DISTRICT JUDGE

³Nor did Plaintiff’s Motion ask that he be permitted to try on the shoes as he appears to suggest in his Objection. (ECF No. 22 at 4.) It is also not clear to the Court how the lack of opportunity to try on shoes relates to Plaintiff’s claim of deliberate indifference under the Eighth Amendment. The declaration attached to Plaintiff’s Objection asserts that the shoes that were previously issued from a vendor called “Bob Barker” hurt his feet because of “the type of construction and type of material used.” (ECF No. 22 at 6.) As Defendants correctly pointed out, these allegations are not part of the Complaint and were not raised in Plaintiff’s Motion.